

Tuesday, March 4, 2003

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Urban Pipe and Supply Inc., 157311 & 170577, Charles F. Guzy, 145187 and Susan Buck, 142125.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Craft Communications, Inc., 56077, 128623

10-1-96 to 3-31-97, \$00.00 Tax

4-1-97 to 9-30-99, \$13,778.09 Tax, \$00.00 Penalty for Failure to Timely Pay

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Las Mananitas, Inc., 89002159030

7-1-94 to 9-15-97, \$7,692.79 Tax, \$00.00 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Consolidated Electrical Distributors, Inc., 89000254960, 89000254970

10-1-92 to 9-30-95, \$357,870.37 Tax

4-1-95 to 9-30-95, \$63,533.87 Claim for Refund

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Urban Pipe and Supply, Inc., 157311, 170577

10-1-99 to 11-23-99, \$00.00 Tax

10-1-99 to 11-23-99, \$1,776.02 Claim for Refund

Action: The Board took no action.

Kenneth Bryan Fogg, 101176

4-1-97 to 3-31-00, \$1,451.91 Tax

Action: Redetermine as recommended by the Appeals Division.

The R.A.Q. Corporation, 128530

1-1-98 to 3-31-00, \$3,244.49 Tax, \$324.45 Penalty for Failure to Timely Pay

Action: Redetermine as recommended by the Appeals Division.

Charles F. Guzy, 145187

7-1-98 to 6-30-01, \$6,309.72 Tax, \$630.98 Negligence Penalty

Action: The Board deferred consideration of this matter.

Tuesday, March 4, 2003

American Medical Technologies, Inc., 135943

1-1-96 to 12-31-97, \$63,334.85 Tax

Action: Redetermine as recommended by the Appeals Division.

Monarch Beverage, Inc., 154907

4-1-98 to 3-31-01, \$8,248.84 Tax

Action: Redetermine as recommended by the Appeals Division.

Craig Steven Sims, 88189

1-1-97 to 3-31-98, \$1,804.68 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Susan Buck, 142125

8-28-96 to 12-31-00, \$00.00 Tax, \$7,693.80 Penalties

Action: The Board deferred consideration of this matter.

Paul Anthony Sabesky, 61865

1-1-94 to 12-31-97, \$109,847.70 Tax, \$27,461.96 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

MDDS, Inc., 135342

7-1-97 to 6-30-00, \$00.00 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Maya and Yucov Stolpner, 117108

7-1-95 to 12-31-99, \$47,128.39 Tax

Action: Redetermine as recommended by the Appeals Division.

Abdalla Hemond Qallab, 87622

4-15-94 to 12-31-98, \$144,448.52 Tax, \$36,454.13 Fraud Penalty

Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matters: *Daycare/Children's Creative World, 165468, James P. & Cary C. Haughy, 160710, The Landover Company, dba Dura-Bondbearing Company, 172440, Bruce M. & Rebecca S. O'Bannon, 172422, Shelly Resnik, 162085 and Robert M. & Lois F. Ling, 133712.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Tuesday, March 4, 2003

Daycare/Children's Creative World, 165468

1998, \$821.04 Claim for Refund

1999, \$875.27 Claim for Refund

2000, \$989.00 Claim for Refund

Action: The Board deferred consideration in this matter.

Randall J. Daye, 165721

1998, \$682.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

John R. and Martini Dial, 165492

1998, \$942.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Danny T. Dunne, 166621

1997, \$2,969.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Frank and Mary Fasullo, 169953

1998, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Howard and Eleanor Frizell, 169964

1998, \$885.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Emery Gajdos, 167056

1998, \$209.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Behzad Hafezi, 182603

1999, \$801.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Leonard Halsted, 169961

1999, \$3,751.00 Tax, \$937.75 Penalty

Action: Sustain the action of the Franchise Tax Board.

George Hanson, 171218

1999, \$963.00 Tax, \$20.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Tuesday, March 4, 2003

James P. and Carey C. Haughy, 160710

1997, \$4,925.00 Claim for Refund

Action: The Board deferred consideration in this matter.

Katch Keating, 172820

1999, \$1,334.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

The Landover Company, dba Dura-Bondbearing Company, 172440

1991, \$1,612.25 Claim for Refund

1992, \$1,528.42 Claim for Refund

1993, \$252.91 Claim for Refund

10-31-94, \$278.02 Claim for Refund

10-29-95, \$3,724.41 Claim for Refund

10-27-96, \$2,903.17 Claim for Refund

10-26-97, \$950.02 Claim for Refund

Action: The Board deferred consideration in this matter.

James K. Merrill, 184100

1994, \$8,485.00 Tax, \$1,697.00 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Janis L. Moore, 172355

1990, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

David M. Nawrocki, 164367

1998, \$2,077.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Bruce M. and Rebecca S. O'Bannon, 172422

1998, \$1.00 or more Assessment

Action: The Board deferred consideration in this matter.

Kimberly S. Olzak, 174021

1989, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Bhagwan P. and Asha B. Pohani, 182107

1998, \$903.66 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tuesday, March 4, 2003

Shelly Resnik, 162085

1999, \$1.00 or more Claim for Refund

Action: The Board deferred consideration in this matter.

Philip and Dee Smith, 169863

1995, \$1,645.24 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

William and Annie Sun, 173118

1999, \$4,049.36 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Valencia Dodge, Inc., 157780

9-30-99, \$31,139.14 Claim for Refund

Action: Sustain the modified action of the Franchise Tax Board.

Matias and Rita Villegas, 174071

1998, \$4,786.00 Tax, \$957.20 Accuracy Related Penalty

Action: Sustain the modified action of the Franchise Tax Board.

Franklin Vu, 185510

1999, \$553.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jun Zhang, 174057

1999, \$964.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert M. and Lois F. Ling, 133712

1989, \$72,471 Tax, \$17,591.00 Late Filing Penalty

Action: The Board deferred consideration in this matter.

Kleeber H. Maldonado, 157846

1996, \$235.24 Claim for Refund

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Tuesday, March 4, 2003

Ann Blackburn, 186918

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Dana Ebhodaghe, 167620

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Charlotte B. Flores, 157184

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Rosa Flores, 169755

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Bertha Gallardo, 164501

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Preston Hyder, 187457

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Eula Mae Jones, 191348

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Florea Muresan, 166792

2001, \$142.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jessie Reddix, 166734

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Leib Reyzelman, 183977

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Joseph A. Shinn, 174308

2001, \$247.56 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Tuesday, March 4, 2003

Larry R. Stieber, 156392

2001, \$326.40 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,
CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Sabrina Fisheries Corp., 205241

10-4-98, \$64,814.42

Action: Approve the credit and cancellation as recommended by staff.

Victor Aranda, 206777

1-1-92 to 2-12-97, \$70,465.95

Action: Approve the credit and cancellation as recommended by staff.

Andy Saberi, 206203

1-1-00 to 4-30-01, \$76,539.09

Action: Approve the credit and cancellation as recommended by staff.

Kaiser Foundation Health Plan, Inc., 109029

10-1-97 to 12-31-00, \$1,223,180.51

Action: Approve the refund as recommended by staff.

Richard C. Ephriam, 182054

4-1-91 to 6-30-97, \$71,478.46

Action: Approve the refund as recommended by staff.

The Designory, Inc., 165682

1-1-99 to 12-31-01, \$2,206,043.87

Action: Approve the refund as recommended by staff.

Union Bank of California, N.A., 191156

7-1-99 to 3-31-02, \$161,081.45

Action: Approve the refund as recommended by staff.

Axon Instruments, Inc., 131256

10-1-00 to 12-31-00, \$88,205.11

Action: Approve the refund as recommended by staff.

Tuesday, March 4, 2003

First Future Credit Union, 133025

4-1-98 to 12-31-01, \$99,869.26

Action: Approve the refund as recommended by staff.

Lee's Imperial Welding, Inc., 205691

4-1-99 to 3-31-02, \$330,430.48

Action: Approve the refund as recommended by staff.

Apple Computer, Inc., 205226

1-1-91 to 9-30-98, \$376,971.74

Action: Approve the refund as recommended by staff.

Fujitsu Microelectronics, Inc., 94186

10-1-99 to 6-30-00, \$51,707.75

Action: Approve the refund as recommended by staff.

Communications Supply Corp., 205459

1-1-01 to 12-31-01, \$386,023.10

Action: Approve the refund as recommended by staff.

The Bennett Funding Group, Inc., 142385

10-1-00 to 12-31-00, \$77,117.00

Action: Approve the refund as recommended by staff.

Franke, Inc., 188572

7-1-01 to 9-30-01, \$92,659.06

Action: Approve the refund as recommended by staff.

Leegin Creative Leather Prod., Inc., 156719

4-1-01 to 9-30-01, \$112,865.86

Action: Approve the refund as recommended by staff.

Forms Plus, Inc., 164711

4-1-99 to 6-30-01, \$53,188.70

Action: Approve the refund as recommended by staff.

Financial Partners Credit Union, 157705

10-1-98 to 12-31-01, \$330,229.67

Action: Approve the refund as recommended by staff.

State Street Invstmt. Mgmt. Solutn, 204609

7-1-00 to 3-31-02, \$63,490.16

Action: Approve the refund as recommended by staff.

Tuesday, March 4, 2003

Alamo Rent A Car LLC, 187560

9-19-01, \$87,877.43

Action: Approve the refund as recommended by staff.

Aixtron, Inc., 170754

1-1-01 to 3-31-01, \$88,871.29

Action: Approve the refund as recommended by staff.

Obagi Medical Products, Inc., 131460

4-1-98 to 9-30-01, \$92,491.12

Action: Approve the refund as recommended by staff.

Adesta Communications, Inc., 205715

7-1-00 to 9-30-00, \$121,945.33

Action: Approve the refund as recommended by staff.

Good Samaritan Hospital LP, 133568

1-1-99 to 6-30-01, \$136,360.19

Action: Approve the refund as recommended by staff.

Gemplus Corporation, 170746

7-1-01 to 6-30-02, \$191,022.34

Action: Approve the refund as recommended by staff.

Iona Technologies, Inc., 164598

4-1-01 to 12-31-01, \$82,672.63

Action: Approve the refund as recommended by staff.

New World Systems Corporation, 184388

4-1-02 to 6-30-02, \$59,881.92

Action: Approve the refund as recommended by staff.

Credit Acceptance Corporation, 106633

1-1-97 to 12-31-00, \$1,434,492.85

Action: Approve the refund as recommended by staff.

Dynegy Connect LP, 188574

1-1-02 to 3-31-02, \$67,080.59

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 206308

1-1-98 to 12-31-01, \$2,846,578.70

Action: Approve the refund as recommended by staff.

Tuesday, March 4, 2003

Kaiser Foundation Hospitals, 204665

1-1-97 to 12-31-99, \$2,167,790.90

Action: Approve the refund as recommended by staff.

Kaiser Foundation Hospitals, 111771

1-1-98 to 12-31-00, \$1,945,345.44

Action: Approve the refund as recommended by staff.

Oliver A. Goldsmith, 109034

10-1-97 to 12-31-00, \$754,906.22

Action: Approve the refund as recommended by staff.

Mervyn's, 206490

4-5-98 to 3-31-01, \$50,548.83

Action: Approve the refund as recommended by staff.

El Camino Hospital, 115585

1-1-98 to 12-31-00, \$59,640.24

Action: Approve the refund as recommended by staff.

Synchronex, 141348

4-1-99 to 9-30-01, \$143,737.77

Action: Approve the refund as recommended by staff.

Sacramento Credit Union, 154311

10-1-98 to 12-31-01, \$114,448.89

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 114627

1-1-98 to 6-30-02, \$287,861.93

Action: Approve the refund as recommended by staff.

GTE Mobilnet Service Corporation, 97531

1-1-96 to 12-31-98, \$638,555.68

Action: Approve the refund as recommended by staff.

BTECH, Inc., 164433

7-1-99 to 3-31-02, \$82,518.84

Action: Approve the refund as recommended by staff.

The Finance Company, 55721

1-1-97 to 12-31-01, \$1,305,885.08

Action: Approve the refund as recommended by staff.

Tuesday, March 4, 2003

Kitchen Mart, Inc., 205315

10-1-99 to 9-30-02, \$105,755.24

Action: Approve the refund as recommended by staff.

United Auto Credit Corporation, 197718

1-1-98 to 6-30-02, \$716,697.49

Action: Approve the refund as recommended by staff.

**SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS
FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Hook Sportfishing Charters, Inc., 173747

11-21-00, \$79,921.88

Action: Approve the redetermination as recommended by staff.

Paloma Air LLC, 181869

3-21-01, \$55,030.00

Action: Approve the redetermination as recommended by staff.

The Designory, Inc., 206019

1-1-99 to 12-31-01, \$288,488.13

Action: Approve the denial of claim for refund as recommended by staff.

Camlever, Inc., 165679

1-1-99 to 12-31-01, \$56,220.00

Action: Approve the denial of claim for refund as recommended by staff.

Mission Tile, 158250

1-1-99 to 12-31-00, \$55,274.15

Action: Approve the denial of claim for refund as recommended by staff.

The Finance Company, 206740

1-1-97 to 12-31-99, \$516,575.26

Action: Approve the denial of claim for refund as recommended by staff.

Tuesday, March 4, 2003

SPECIAL TAXES MATTERS REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Financial Security Assurance, Inc., 205357*, and *Chicago Title Insurance Company, 206337*, the Board made the following orders:

Financial Security Assurance, Inc., 205357

1-1-01 to 12-31-01, \$82,514.70

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Chicago Title Insurance Company, 206337

1-1-01 to 12-31-01, \$1,215,242.03

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Sistema Intl De Trnsptne De Auto, 207444

1-1-99 to 3-31-01, \$54,216.95

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES AND REDETERMINATIONS, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties and Redeterminations, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Old Republic Insurance Company, 206172*, and *Factory Mutual Insurance Company, 206173*, the Board made the following orders:

Old Republic Insurance Company, 206172

7-1-02 to 9-30-02, \$55,532.10

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Factory Mutual Insurance Company, 206173

4-1-02 to 6-30-02, \$94,740.50

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Tuesday, March 4, 2003

Dunn-Edwards Corporation, 165300

1-1-01 to 12-31-01, \$91,984.00

Action: Approve the redetermination as recommended by staff.

ADMINISTRATIVE SESSION

2002-03 FISCAL YEAR CONTRACT OVER \$1 MILLION

Dade Powers, Chief, Administrative Support Division, made introductory remarks regarding the *2002-03 Fiscal Year Contract Over \$1 Million*.

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board deferred the renewal of the interagency agreement with Inter-Con Security Services, Inc., to April 23, 2003 (Exhibit 3.1).

Exhibits to these minutes are incorporated by reference.

SALES AND USE TAX APPEALS HEARINGS

Ozone Productions, 89000098650

Olivia Beren, 89000965750

7-1-94 to 6-30-97, \$15,480.25 Tax, \$00.00 Failure to File Penalty

1-1-91 to 12-31-97, \$2,914.34 Tax, \$291.34 Failure to File Penalty

For Petitioner: Charles Stanton, Representative

For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue in the petition of 89000098650

Whether the presence of Ozone Productions, LTD's (Ozone) in California is sufficient to establish nexus with California as a retailer engaged in business in this state under Revenue and Taxation Code section 6203, such that Ozone was required to collect from its customers and remit to the Board the applicable California use tax.

Issues in the petitions of 89000098650 and 89000965750

Whether the art images that Ozone and Olivia Beren transferred were not tangible personal property, meaning that their sale would not be subject to sales or use tax as petitioners allege, and if transferred as tangible personal property, the proper measure of tax.

Whether the retail fair market value of the tangible personal property that petitioners transferred in conjunction with the technology transfer agreements is less than 25 percent of the royalties received.

Issues in the petition of 89000965750

Whether Olivia Beren has met her burden of establishing that the disallowed exempt sales were actually sales in interstate commerce.

Whether relief is warranted from the 10 percent penalty for failure to file returns assessed against Olivia Beren.

Tuesday, March 4, 2003

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

International Beach LLC, 53553

1-1-96 to 12-31-98, \$54,662.84 Tax, \$00.00 Negligence Penalty

For Petitioner: Robert J. Marshall, Representative
Janet Pass, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence supports accepting reported taxable sales of alcoholic beverages for the years of 1997 and 1998.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden and Mr. Chiang voting no, the Board ordered that the petition be redetermined with adjustments.

Atlantic Café, Inc., 135353

10-1-97 to 11-30-00, \$20,363.48 Tax, \$2,036.38 Penalty

For Petitioner: Gordon Cutler, Attorney

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence shows that the audited amount of total sales is excessive.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tucker Enterprises Inc., 100271

11-26-97, \$58,125.00 Tax, \$00.00 Failure to File Penalty

For Petitioner: David Park, CPA
Art Brooks, Representative
Henry Cloud, Owner

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the vessel purchase is nontaxable because the vessel was principally used to transport persons for hire in interstate commerce.

Whether petitioner is entitled to relief under Revenue and Taxation Code section 6596.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tuesday, March 4, 2003

Valor Computerized Systems, Inc., 87726, 140629

7-1-97 to 6-30-00, \$167,084.35 Tax

For Petitioner:

Ulrich Gottschling, Vice President

Glenn Bystrom, Representative

Suzanne Beaudelaire, Representative

For Sales and Use Tax Department:

Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Migden. No other contributions were disclosed.

Issues: Whether providing a dongle (a dongle contains security data, and is a small device with prongs that is inserted into a port on the outside of a printer or computer) which along with computer software delivered by electronic means constitutes a sale of tangible personal property measured by the value of software sold.

Whether petitioner is entitled to a refund of taxes paid on the sales of software transferred via electronic means, even though petitioner provided dongles to customers as part of the sales of the software.

Action: Ms. Mandel moved that the petition be submitted for decision. The motion was seconded by Mr. Chiang. Mr. Leonard made a substitute motion to grant the petition, the motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, Ms. Migden absent and not participating in accordance with Government Code section 15626.

Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent and not participating in accordance with Government Code section 15626, the Board ordered that the petition be submitted for decision.

Restorative Care of America, Inc., 127824

1-1-95 to 12-31-99, \$33,643.63 Tax, \$00.00 Failure to File Penalty

For Petitioner:

Glenn Bystrom, Representative

Suzanne Beaudelaire, Representative

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Migden. No other contributions were disclosed.

Issue: Whether petitioner's sales of two types of foot orthoses to health facilities were exempt sales of orthotic devices (medicines).

Action: Mr. Chiang moved that the petition be submitted for decision. Mr. Leonard made a substitute motion that the petition be granted with respect to the Ambu-Assist device. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, Ms. Migden absent and not participating in accordance with Government Code section 15626.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent and not participating in accordance with Government Code section 15626, the Board ordered that the petition be granted and the tax be redetermined accordingly with respect to MPO Active 2000.

Tuesday, March 4, 2003

Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent and not participating in accordance with Government Code section 15626, the Board ordered that the remaining issues of the petition be submitted for decision.

The Board recessed at 12:00 p.m. and reconvened at 1:30 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel.

SPECIAL TAXES APPEALS HEARINGS

Contracted Labor Services, 135704, 135765, 135896

1-1-98 to 12-31-98, \$2,100.00 Fee

1-1-99 to 12-31-99, \$2,147.00 Fee

1-1-00 to 12-31-00, \$2,310.00 Fee

For Petitioner:

Suzanne Kramek, Attorney

Mark Haag, Representative

John Polson, Attorney

For Department of Toxic Substances Control: Dennis Mahoney, Staff Counsel

For Property and Special Taxes Department: Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is the employer of the employees it leases to other corporations for purposes of the annual environmental fee.

Whether relief is warranted on the grounds that petitioner allegedly received erroneous advice from a Board employee.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

M.M.C., Inc., 98762, 98763

1-1-98 to 12-31-98, \$1,500.00 Fee

1-1-99 to 12-31-99, \$1,534.00 Fee

MMC Executive Services, Inc., 169276, 169278

1-1-99 to 12-31-99, \$204.00 Fee, \$00.00 Finality Penalty

1-1-00 to 12-31-00, \$367.00 Fee, \$00.00 Finality Penalty

Medical Management Consultants, International, 169263, 169268, 169270, 169271

1-1-98 to 12-31-98, \$9,500.00 Fee

1-1-99 to 12-31-99, \$9,714.00 Fee

1-1-00 to 12-31-00, \$9,963.00 Fee, \$00.00 Finality Penalty

1-1-01 to 12-31-01, \$10,331.00 Fee, \$00.00 Finality Penalty

For Petitioner:

Sheila Kepler, Representative

Mashi Rahmani, Executive Director

Robert Rinko, Vice President

For Department of Toxic Substances Control: Dennis Mahoney, Staff Counsel

For Property and Special Taxes Department: Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, March 4, 2003

Issue: Whether feepayers were the employers and, thus, subject to the annual fee imposed upon certain corporations pursuant to Health and Safety Code section 25205.6.
Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

SALES AND USE TAX APPEALS HEARINGS

Plastic Pilings, Inc., 104744

10-1-97 to 9-30-99, \$55,026.48 Claim for Refund

For Claimant: Paul E. Nelson, Representative
Joseph A. Vinatieri, Attorney
Ray Carpenter, President

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether claimant's sales of "marine camels" to R. E. Staite Engineering, Inc., (a United States construction contractor) were nontaxable sales of equipment for resale, or taxable sales of fixtures.

Action: Upon motion of Mr. Parrish, seconded by Mr. Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Robert R. Wachtler, Jr., and Susan E. Wachtler Family Trust, 135576

4-20-98, \$00.00 Tax, \$00.00 Negligence Penalty

For Petitioner: Robert R. Wachtler, Jr.

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to relief from interest because the Board's notice of determination was mailed beyond the statute of limitations set forth in Revenue and Taxation Code section 6487.

Whether petitioner is otherwise entitled to relief from the interest assessed because the Department of Motor Vehicles computed the tax incorrectly at the time petitioner registered the vehicle.

Action: (Motion expunged.)

Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that it's previous motion to deny the claim and direct staff to support a California Victim Compensation and Government Claims Board recommendation be expunged.

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

Tuesday, March 4, 2003

Daniel J. Goodman, Jr., 59398

1-1-91 to 6-30-92, \$239,458.81 Tax, \$59,864.70 Fraud Penalty

For Petitioner:

Daniel J. Goodman, Jr.

James Morris, Attorney

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the notice of determination sent to petitioner is defective because the business was owned by a corporation, Galaxy Boat Center, Inc., during the time period at issue.

Whether the measure of tax established using Department of Motor Vehicles (DMV) Forms 110 and purchase orders (audit item 1, \$1,919,773.00 measure) is excessive.

Whether the Department properly established understated taxable sales based on confirmation letters sent to customers (audit item 2, \$181,348.00 measure).

Whether documentation fees and preparation charges should be regarded as nontaxable or exempt (audit item 3, \$99,210.00 measure).

Whether any reduction is warranted to additional taxable sales based on Boat Registration Forms (CF numbers) that could not be traced to DMV Forms 110 (audit item 4, measure \$538,242.00).

Whether any of the amounts included in audit items 6 (\$88,456.00) and 7 (\$239,814.00) were in fact nontaxable sales for resale.

Whether the Department has met its burden of proof to sustain the fraud penalty.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Doug Christmas Fine Art, Inc., 89000030160

11-1-85 to 12-31-89, \$243,514.95 Tax, \$121,757.46 Penalty for Knowingly Failing to Obtain a Seller's Permit, \$24,351.49 Failure to File Penalty

For Petitioner:

Robert S. Altagen, Attorney

For Sales and Use Tax Department:

Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the determination at issue is limited to the eight-year statute of limitations.

Whether the available evidence is sufficient to establish nontaxable status for any of the transactions included in the measure of tax.

Whether the available evidence is sufficient to abate the 10 percent penalty for failure to file returns and/or the 50 percent penalty for knowingly failing to obtain a seller's permit.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Tuesday, March 4, 2003

Advanced Information Services, Inc., 149828

7-1-97 to 9-30-00, \$61,664.38 Tax, \$00.00 Negligence Penalty

For Petitioner:

Dean Eduarde, CEO

Patricia Eduarde, Representative

John F. Martin, CPA

For Sales and Use Tax Department:

Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner's sales of equipment to Virgin Entertainment Group qualify as exempt sales in interstate commerce.

Whether petitioner received misinformation qualifying for relief from the tax.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Gary L. Sornborger, 153925

7-1-97 to 6-30-00, \$16,930.16 Tax, \$00.00 Negligence Penalty

For Petitioner:

Gary L. Sornborger

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence warrants a greater allowance for employee theft.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Aurangzeb Aiyoob Manjra, 82999

1-1-97 to 12-31-98, \$4,658.49 Tax

For Petitioner:

Aurangzeb Aiyoob Manjra

Juan Garcia, Witness

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is responsible for payment of the sales tax.

Whether relief is warranted on the ground that petitioner allegedly received erroneous advice from the Department of Motor Vehicles.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

John Graham Allan and Brenda Joyce Allan, 134938

4-1-98 to 6-30-00, \$4,789.64 Tax

For Petitioner:

Brenda Allan, Manager

Michael Cornell, Consultant

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, March 4, 2003

Issue: Whether labor charges for the installation of accessories on new motorcycles are subject to tax as fabrication labor.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON PETITIONS HEARD MARCH 4, 2003

Ms. Migden moved to deny and redetermine without adjustment the petitions of *Ozone Productions, 89000098650* and *Olivia Beren, 89000965750*. The motion was seconded by Ms. Mandel. Mr. Parrish made a substitute motion to cancel the negligence penalty. The motion was seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes.

Upon motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition of *Atlantic Café, Inc., 135353*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Tucker Enterprises Inc., 100271*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the petition of *Contracted Labor Services, 135765, 135704, 135896*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the petition of *M.M.C., Inc., 98762, 98763; MMC Executive Services, Inc., 169276, 169278*; and, *Medical Management Consultants, International, 169263, 169268, 169270, 169271*, be denied and redetermined as recommended by the Appeals Division.

Tuesday, March 4, 2003

Ms. Migden moved to deny and redetermine the petition of *Plastic Pilings, Inc.*, **104744**. Mr. Parrish made a substitute motion to submit the appeal for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board. The motion was seconded by Mr. Leonard and duly carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden voting no.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Daniel J. Goodman, Jr.*, **59398**, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Doug Christmas Fine Art, Inc.*, **89000030160**, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Advanced Information Services, Inc.*, **149828**, be denied and redetermined as recommended by the Appeals Division.

Ms. Migden moved to deny the petition of *Robert R. Wachtler, Jr., and Susan E. Wachtler Family Trust*, **135576**. The motion failed for lack of a second.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Migden voting no, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division. The Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

Upon motion of Mr. Parrish, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Parrish, and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, the Board ordered that the petition of *Gary L. Sornborger*, **153925** redetermined with adjustments.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Aurangzeb Aiyoob Manjra*, **82999**, be denied and redetermined as recommended by the Appeals Division. The Board directed staff to offer the petitioner a payment plan.

Tuesday, March 4, 2003

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *John Graham Allan and Brenda Joyce Allan, 134938*, be denied and redetermined as recommended by the Appeals Division.

Mr. Leonard moved to limit the sales tax on Item 1 in the petition of *Valor Computerized Systems, Inc., 87726, 140629*. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, Ms. Migden absent and not participating in accordance with Government Code section 15626.

Ms. Mandel moved to deny and redetermine the petition as recommended by the Appeals Division. The motion failed for lack of a second.

Upon motion of Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent and not participating in accordance with Government Code section 15626, the Board ordered that the petition be submitted for decision and brought back to the Board on April 23, 2003.

Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent and not participating in accordance with Government Code section 15626, the Board ordered that the petition of *Restorative Care of America, Inc., 127824*, be submitted for decision and brought back to the Board on April 23, 2003.

The Board adjourned at 5:15 p.m.

The foregoing minutes are adopted by the Board on April 23, 2003.

Note: The following cases were removed from the calendar prior to the meeting: *Jewelry Doctor Inc., 89000112920; Hector Gonzalez and Margarita Gonzalez, 89000017380; Hector Antero Gonzalez, 89000127920, 89002433640, 89000116100; Hector Gonzalez and Margarita Gonzalez, 89000110980, 89002390640; and, Hector Gonzalez, Margarita Gonzalez and Jaime De Jesus, 89000131070*